IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
:::

:: O R D E R ::

INDER KUMAR VS HARI PRAKASH & ANR.

S.B.CIVIL WRIT PETITION NO.1043/2005 UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 22.2.2005

PERSENT

REPORTABLE

HON'BLE MR. PRAKASH TATIA,J.

Mr. N.M.Lodha, for the petitioner.
Mr. Sachin Acharya]
Mr. Mukul Singhvi], for the respondent-caveator.

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BY THE COURT:

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 5.2.2005 by which the first appellate court dismissed the petitioner's application filed under Order 6 Rule 17 CPC. However, by the same order, even after rejecting the petitioner's application, the first appellate court held that the plea taken by the petitioner-defendant-appellant in the

application filed under Order 6 Rule 17 CPC will be considered by the appellate court at the time of hearing of the appeal and, therefore, there is no need to allow amendment of the written statement.

According to learned counsel for the petitioner, the first appellate court has committed serious error of law in observing that the amendment sought is not necessary and also not relevant. The first appellate court also committed serious error in holding that the application for amendment of the written statement has been filed after delay, therefore, the application can be rejected on this count also. It is also submitted that the order of the first appellate court is self-contradictory inasmuch as the first appellant court at one place held that the amendment is not necessary and relevant and at other place, in the same order, held that the plea raised by the petitioner is legal and the effect of the subsequent event can be considered by the appellate court while deciding the appeal without amendment of the written statement. It is also submitted by learned counsel for the petitioner that unless and until the petitioner is permitted to take a defence in the written statement, the petitioner-defendant will not be able to prove that the plaintiff himself obtained the decree for fixation of standard rent by filing the suit under the provisions of Rajasthan Rent Control Act, 2001 and not only this, but the plaintiff acted upon that decree. Since he himself obtained decree from the Rent Control

Tribunal, the plaintiff-respondent cannot claim increase of the rent and after the decision of the Rent Control Tribunal dated 1st May, 2004, the plaintiff cannot claim his right to get the rent from the petitioner beyond the rent fixed by the Rent Control Tribunal. It is also submitted that there will be factual matters, which will need reply and also needed evidence to decide the point, which was held by the appellate court as legal point.

I considered the submissions of learned counsel for the parties.

Brief facts of the case are that the plaintiff-respondent filed suit for eviction as well as for fixing the standard rent in the year 1987 under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950. During the pendency of that suit before the trial court itself, the plaintiff filed another suit in the Rent Control Tribunal, Sri Ganganagar under the provisions of Section 6 of the Rajasthan Rent Control Act, 2001. The subsequently filed suit was decreed by the Rent Tribunal on 1st May, 2004 before the suit, which was filed earlier under the Old Act was decided. However, that fact was not brought to the notice of the trial court and the trial court decreed the suit of the plaintiff and declared the standard rent of the premises @ Rs.3,000/- per month, despite the fact that the Rent Tribunal fixed the rent of the same premises as Rs.1350/- per month.

The petitioner being aggrieved against the judgment and decree of the trial court dated 28th July, 2004 passed under the Old Act, preferred appeal. In the appeal, the petitioner-defendant submitted application for amendment of the written statement under Order 6 Rule 17 CPC on 5.2.2005. The said application was dismissed by the first appellate court vide impugned order dated 5.2.2005 itself.

The petitioner has placed on record the certified copy of the judgment of the Civil Court dated 28th July, 2004 and the uncertified copy of the judgment of the Rent Control Tribunal dated 1st May, 2004.

It appears from the judgment dated 1st May, 2004 itself that same plaintiff, who filed the suit for eviction and fixation of standard rent before the civil court under the Act of 1950, filed another suit for fixation of standard rent under the provisions of the Act of 2001, which was enacted during the pendency of earlier suit and sought relief of fixation of standard rent @ 1600.83/- per month. The Rent Tribunal decreed the suit on 1.5.2004 and declared the standard rent @ 1350/- per month. The Civil Court in earlier filed suit fixed the standard rent @ Rs.3,000/- per month. The facts are not in dispute. The contention of petitioner that what has been claimed by the respondent-plaintiff and what has been awarded by the Rent Tribunal can be gathered from the judgment of the first appellate court, but the plaintiff-respondent

accepted the standard rent without any protest and took the money from the defendant-petitioner is a question of fact.

It is clear from the totality of the facts that the filing of the suit is not in dispute, the standard rent claimed in the subsequently filed suit is also not in dispute, what has been decreed by the trial court in earlier suit by the court is also not in dispute. Learned counsel for the respondent-plaintiff admits that no appeal has been filed by the plaintiff-respondent against the judgment of the Rent Tribunal dated 1st May, 2004. In view of the above, the judgment has attained the finality, therefore, it is clear that the respondent is not disputing any fact mentioned in his own plaint and recorded by the Rent Tribunal in its order dated 1st May, 2004. In view of the above, there are two decrees fixing the rent for one premises. Therefore, the facts, which sought to be brought to the notice of the appellate court by the petitioner-defendant were facts relating to subsequent event and also has material bearing for deciding the appeal by the first appellate court.

In view of the above, the earlier judgment is a relevant judgment before the first appellate court and the first appellate court is totally wrong when the first appellate court held that the plea taken in the proposed amendment is unnecessary and irrelevant. The delay, which has been caused in filing the application for amendment of the written

statement is concerned, that too, could have been condoned by the first appellate court in view of the fact that the plea which petitioner wants to take was an important plea based on the law point. Whether the payment has been received by the plaintiff-respondent in pursuance of the decree obtained by the plaintiff himself is not of much relevance as he could not avoid admissions made in his pleadings and could not have avoided what he sought from a competent court of law.

In view of the above, the order so far as it says that the amendment was unnecessary and was not relevant is self-contradictory as well as is illegal, cannot be justified.

The apprehension of learned counsel for the petitioner that the respondent-plaintiff accepted the rent in pursuance of the decree is also of not much significance in view of the fact that the judgment obtained by the plaintiff-respondent is not dependent upon by action of the plaintiff-respondent. It is also relevant to mention here that the plea, which has been taken by the petitioner is based on subsequent events and for that purpose the court can take note of subsequent events even without amendment of pleadings and in this case when plaintiff-respondent himself is opposing the pleading and the first appellate court held that the first appellate court will consider the point in appeal, therefore, a question of lack of pleading, that does not arise in this

matter. Apart from it, if the petitioner has paid the rent to the landlord in pursuance of the decree dated 1st May, 2004 passed under the Rajasthan Rent Control Act, 2001, then he could have very well submit the documents before the first appellate court, which can be examined by the first appellate court as fact in continuation of the subsequent events of passing of the decree dated 1st May, 2004.

In view of the above, since the first appellate court itself held that the plea, which has been taken to be raised by the petitioner by amendment is a legal plea and it can be examined by the first appellate court, therefore, I do not find any reason to interfere in the order dated 5th May, 2004, except holding that the reasons given in sub-paras no.1 and 2 of the para no.4 are self-contradictory and also are illegal, wrong and the plea, which is sought to be raised by the petitioner requires to be considered by the first appellate court in accordance with law as the first appellate court itself held in sub-para no.3 of para no.4 of the impugned order itself.

In view of the above, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-